IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5426 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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EXECUTIVE ENGINEER

Versus

VALLABHBHAI GORDHANBHAI KASUNDRA

Appearance:

1. Special Civil Application No. 5426 of 2001

MR SP HASURKAR for Petitioner No. 1

MR HM PRACHCHHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/03/2002

ORAL JUDGEMENT

#. Heard Mr.S.P.Hasurkar, learned advocate appearing on behalf of the petitioner - Board and Mr.H.M. Prachchhak, learned advocate for respondent workman.

#. In the present petition, the petitioner has

challenged the award passed by the Labour Court, Junagadh in Reference No.1363 / 1987 [New Number : 1001 / 1990] dated 22nd February, 2001, wherein the labour court has set aside the termination order and granted reinstatement with continuity of service and 25 % backwages of the interim period. This Court has issued RULE and granted ad-interim relief in terms of para-6[B] on 18th July, 2001 and RULE was made returnable on 28th August, 2001. Today when the matter is taken up for hearing, with the consent of learned advocates for the parties, this matter is finally heard.

#. Learned advocate Mr.Hasurkar on behalf of the petitioner Board has submitted that the respondent workman was appointed on periodical basis and he was not in continues service and the respondent workman has not rendered continuous service of 240 days within 12 months from the date of termination. Mr.Hasurkar, learned advocate has also submitted that the labour court has given clear finding that the respondent workman has not completed 240 days continuous service. However, finding of the labour court is based on presumption because of the fact that the respondent workman had remained in service for period from 14th November, 1981 to 13th January, 1983. On that basis, the labour court has come to the conclusion that if the respondent workman had remained in service, naturally, he must have completed 240 days continuously. Therefore, learned advocate Mr.Hasurkar has submitted that after all, he was temporary person, engaged by the petitioner Board as and when the work was available but despite of this fact, the labour court has granted continuity of service with 25 % backwages and therefore, the labour court has committed gross error in granting such relief to a temporary person who has not completed 240 days continues service within period of 12 months from the date of termination.

#. Learned Advocate Mr.Prachchhak on behalf of the respondent workman has sbumitted that service of the respondent workman was terminated on 7th June, 1984 and he was appointed on 4th July, 1980. During this period, he completed about 605 days continues service and on the basis of documents at Exh.13 to 26, wherein appointment order produced by the petitioner before the labour court, the Labour Court has come to the conclusion that the respondent workman has completed 240 days continues service. Such finding is based on evidence and therefore, same cannot be disturbed by this Court while exercising the powers under Article 226 and 227 of the Constitution of India. Mr.Prachchhak, learned advocate has submitted that no doubt periodical appointments were

given to the respondent workman but he was continues in service for period from 14th November, 1981 to 13th January, 1983 and during this period, he remained in service and as such, the workman has completed 240 days continues service and therefore, the labour court has rightly passed the award granting reinstatement with 25 % backwages of interim period and also granted continuity of service. Therefore, Mr.Prachchhak, learned advocate submits that the labour court has not committed any error in passing such award which in any way not required any interference by this Court while exercising the powers under Article 226 and 227 of the Constitution of India.

#. I have considered submissions of the learned advocates for the parties. Perusal of the award reflects that the respondent workman was appointed by the petitioner Board on 18th October, 1980 to 2nd May, 1981, from 14th November, 1981 to 13th January, 1983, July, 1983 to December, 1983, April, 1984 to July, 1984 and thereafter from October, 1984 and November, 1984. Thus, for these different periods, for which, the respondent workman was appointed by specific orders. However, the respondent workman was working as Workcharge Helper and the labour court has considered the undisputed period from 14th November, 1981 to 13th January, 1983 and in between there was no break in service and it was not case of the petitioner Board that there was some break in service. Therefore, considering the working days of this period from 14th November, 1981 to 13th January, 1983, conclusion is drawn that the respondent workman has completed 240 days continues service. Therefore, this finding is based upon the appointment orders issued in favour of the respondent workman which produced by petitioner Board before the Labour Court. Therefore, the finding of the labour court that the respondent workman has completed 240 days continues service, is based upon the documentary evidence and therefore, such finding cannot be disturbed by this Court while exercising the powers under Article 226 and 227 of the Constitution. Therefore, the labour court has granted reinstatement to the respondent workman, in view of this Court, need not require to be disturbed by this Court.

#. Now the question arise about backwages as well as continuity of service awarded by the Labour Court. The labour court has granted 25 % backwages of interim period as well as granted continuity of service. It has come on record that the workman was appointed periodically and there was no continuous service in between and thus, the workman was appointed some times for three months and / or four months pursuant to the order issued by the petitioner Board. Therefore, considering all these

facts, it transpires that the petitioner Board has violated provisions of Section 25-F of the I.D.Act, 1947 in case of the respondent workman at the time of terminating service of the workman. Therefore, in such situation, grant of 25 % backwages of the interim period is unwarranted because there has nothing on record in the deposition given by the respondent workman vide Exh.32 wherein, he admitted that his monthly expenses was about Rs.1200/- per month and his wife is earning and he is also doing some miscellaneous labour work. Therefore, it transpires that the workman was gainfully employed. In light of these facts, it seems that while granting 25 % backwages to the respondent workman, the labour court has committed error. Similarly, in such situation, once the workman was not in continued service from 1982 to 194, the conclusion of labour court granting continuity of service is also erroneous inasmuch as there was no pre existing vacancy at the time of termination of respondent. Therefore, according to my opinion, the labour court has committed error in granting 25 % backwages as well as continuity of service in favour of the respondent workman and such directions issued by the labour court in this regard, require to be set aside.

#. In the result, this petition is partly allowed. The award passed by the labour court, Junagadh in Reference No.1363/1987 [New Number 1001 / 1990] dated 22nd February, 2001 is not disturbed by this Court so far it relates to the reinstatement to the respondent workman but the directions in respect of grant of 25 % backwages of the interim period and continuity of service awarded in favour of the respondent workman is hereby quashed and set aside. Accordingly, this petition is partly allowed.

#. Learned advocate Mr.Prachchhak on behalf of the respondent workman submits that because of the interim order passed by this Court, the respondent workman has not been reinstated in service so far and therefore, some suitable directions may be issued so that respondent workman can be reinstated in service at the earliest. Considering submission of learned advocate for respondent workman, Learned advocate Mr.Hasurkar submits that within some reasonable time the petitioner Board will reinstate the respondent workman. Therefore, considering submissions of the learned advocates for parties, it is directed to the petitioner Board to reinstate the respondent workman with effect from 22nd February, 2001 within period of one month from the date of receiving the copy of this order. The petitioner Board is further directed to pay full wages with effect from 22nd February, 2001 till the date of actual reinstatement

within period of two months from the date of receiving the copy of this order.

Rule is made absolute accordingly. No order as to costs. Direct Service is permitted to respondent workman.

Date : 7-3-2002 [H.K.Rathod, J.]

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